

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 26

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 March 6, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
18 Ms. Justine Fox-Young.

19 Jennifer Bean, FAPR, RDR, RMR, CCR
20 United States Court Reporter
21 Certified Realtime Reporter
22 333 Lomas, Northwest
23 Albuquerque, NM 87102
24 Phone: (505) 348-2283
25 Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: All right. Good morning,
2 everyone. We'll go on the record. I appreciate
3 everybody getting back over here and assisting with
4 this.

5 We received a note from the jury. They
6 didn't use our little fancy form that we gave them to
7 use. They tore off a piece of paper. So I have
8 taped it on this note from the jury so that it's a
9 little more official looking.

10 It says, "Your Honor, page 36 and 37, Count
11 7, additional instruction as to first-degree and
12 second-degree murder -- found in jury instruction 27
13 and 28. Please clarify how it applies."

14 It's not signed by anybody, so it's
15 unfortunate they didn't use the form that we gave
16 them. But it looks like we're getting another note,
17 and they're not using the forms we're giving them.

18 I guess I'll propose some response. I
19 would put, "Please reread jury instruction number 24
20 on page 29 and jury instruction number 26 on page
21 33." That's what I would propose, but y'all may have
22 some different notes.

23 MR. VILLA: Can we hear the note again?

24 THE COURT: Yes, it says, "Page 36 and 37,
25 Count 7, additional" -- it's ADD'L -- "instruction

1 for first-degree and second-degree murder -- found in
2 jury instruction 27 and 28. Please clarify how it
3 applies."

4 Do they not have these pages back there?

5 THE CLERK: I thought they did, but maybe
6 they don't.

7 THE COURT: Why don't you take them back,
8 if you don't know for certain if they have them,
9 because I don't want these notes on this sort of
10 paper. It's going to get ragged if we don't use what
11 we prepared for them earlier this month.

12 MR. CASTELLANO: Your Honor, this was one
13 of the concerns I had when we were discussing the
14 jury instructions. And that's that we've given them
15 two theories of murder, and they can decide on each
16 one. And I don't think they know that. We've just
17 told them what the elements are of two theories of
18 murder, and one of my recommendations was possibly to
19 have what's considered called a step-down instruction
20 in the state instruction, which says you should
21 consider first-degree murder first, and if you can't
22 reach a decision on first-degree, whether that
23 applies, you should consider whether second-degree
24 murder applies in each these circumstances.

25 So right now they just have instructions,

1 but I don't think they know what to do with either
2 theory and whether they can decide one or the other
3 in order to find the defendants guilty.

4 THE COURT: All right. What's the
5 defendants' thoughts?

6 MR. VILLA: Your Honor, do you mind
7 repeating what your proposed response is?

8 THE COURT: "Please reread jury instruction
9 number 24 on page 29 and jury instruction number 26
10 on page 33."

11 MR. VILLA: Your Honor, I think I agree
12 with the Court.

13 MS. DUNCAN: As do we, Your Honor. Oppose
14 the step-down instruction.

15 MS. JACKS: We're in the same position.

16 MR. MAYNARD: We are, as well.

17 THE COURT: Well, I think if we were going
18 to do something, we probably should have done it at
19 the jury instruction stage rather than now, with
20 questions from the jury.

21 I'm going to write what I have written out
22 here and let y'all look at it and make sure that
23 everybody can read it.

24 MR. VILLA: And we could recommend they use
25 the note form for future purposes.

1 THE COURT: All right. I'll ask Ms.
2 Standridge to show you this note and my response.
3 See if y'all can read it and agree that it should go
4 back. Or if you have further objections, make it and
5 I'll ask Ms. Standridge to make a copy of it for her
6 clerk's file, as exhibit -- what's going to be the
7 clerk's exhibit?

8 THE CLERK: Z.

9 THE COURT: Clerk's Exhibit Z. We'll send
10 the original back in and we'll make a copy and make
11 it Clerk's Exhibit Z.

12 While y'all are looking at that, let me
13 take up another matter. As you know, we took all the
14 cellphones and electronic devices away from the
15 jurors. We also took them away from the alternates,
16 which is what I typically do when I keep the jurors
17 under charge.

18 At first Mr. Moore, our first alternate,
19 juror number 9, alternate number 1, now, Michael
20 Wayne Moore from Hobbs, refused to give his device.
21 After thinking about it a while, he then surrendered
22 it. But he wrote me a note here which we will now
23 mark as Exhibit AA. It's dated 3/6/18 at 8:30 a.m.
24 "Judge Browning, I know you have set rules for no
25 electronic devices for the alternates, as well, but

1 may I request an exception in my case? This entire
2 six weeks has been very difficult for me. I have
3 three restaurants and 70 employees that I manage on a
4 daily basis. Every break and my entire lunch break
5 for this last six weeks has been spent sending
6 emails, texts, and making phone calls. Not having
7 this ability now will really affect my business even
8 more than it already has. I have a half million
9 dollar RE" -- I assume that's real estate transaction
10 -- that is coming to a near close. Not being able to
11 reply to my attorney and broker will affect this
12 greatly at this point. Is there any compromise we
13 can come to here? Michael Moore."

14 I'm going to mark that as Exhibit AA. Any
15 thoughts on that from the Government standpoint?

16 MS. ARMIJO: Your Honor, we don't oppose
17 him having his phone or electronics as long as you
18 can instruct him not to do any research, and he uses
19 it for personal reasons.

20 THE COURT: Okay. Anybody have any
21 thoughts?

22 MS. JACKS: I think we've quickly consulted
23 among the defendants, and we wouldn't object if the
24 Court just excuses him.

25 THE COURT: Excusing all of them, or just

1 him?

2 MS. JACKS: Just him.

3 THE COURT: He's your first alternate. You
4 know that.

5 MS. ARMIJO: Right. We don't want to
6 excuse him. We just want him to be able to -- him
7 and the rest of them, be able to have their
8 electronic devices.

9 THE COURT: Well, I don't think I'll excuse
10 him yet. If the defendants don't want to have -- him
11 to have electronic devices, I'll just keep plowing
12 ahead. My instinct is probably it's not -- he
13 shouldn't have them, but he did make a somewhat
14 compelling case. So unless I hear otherwise from
15 you, I'll just sit on that note for a while.

16 The next note that we received -- is
17 everybody in agreement on this?

18 MS. JACKS: We're just talking.

19 MS. BHALLA: We don't have an objection to
20 letting him have his electronic devices as long as
21 they know the same instruction applies that has the
22 whole trial.

23 MR. VILLA: If you remind him of that, I
24 think that's fine.

25 MS. JACKS: I'm in the same position. I

1 guess the only thing is, I think all the alternates
2 should be treated the same. So if the Court is going
3 to give him his phone back, I think they all should
4 get them back.

5 MS. ARMIJO: That's fine, Your Honor.

6 THE COURT: Does anybody have any
7 problem -- I mean, I don't mind going down and
8 telling them that. Do you have any problem with
9 maybe Ms. Standridge telling them they can have their
10 phones, but remember, they can't use them for any
11 research or for purposes of communicating about this
12 case, those instructions apply.

13 (All agree.)

14 THE COURT: All right. Ms. Standridge, if
15 you'll do that.

16 And was everybody comfortable about this
17 note going back like this?

18 MS. ARMIJO: Yes.

19 THE COURT: So have Ms. Standridge take
20 that note back.

21 The next note says, "Joanne, can we please
22 have hard copies of the pictures of cooperators from
23 12/3/15 and 4/28/16? Additionally, please give us
24 tape to put the pictures up if possible."

25 So I guess what they're wanting to do is to

1 get hard copies of the pictures of the cooperators.
2 What is the significance of those dates? Am I
3 missing something?

4 MS. JACKS: I think they want tape to tape
5 them up on the wall.

6 THE COURT: I agree. But they wanted
7 copies of the pictures of cooperators from 12/3/15
8 and 4/28/16.

9 MR. VILLA: Those are the two dates, the
10 first indictment and the second indictment.

11 MR. LOWRY: Those are the dates --

12 THE COURT: So are they wanting the
13 pictures of the people named in the indictment? Is
14 that what they're wanting?

15 MS. BHALLA: I think they're asking Your
16 Honor for the pictures of the cooperators that were
17 called with their -- you know, when they held up the
18 sign that said the day that they were arrested on the
19 charge. So if you'll recall, Your Honor, they were
20 holding that little plaque in front of them with the
21 date of the arrest, the dates of the first roundup
22 and the second roundup. I think those are the
23 pictures that they want.

24 THE COURT: Was the first date 12/3/15?

25 MS. BHALLA: Yes, Your Honor.

1 THE COURT: And the second date was
2 4/28/16?

3 MS. BHALLA: Yes, Your Honor.

4 THE COURT: So it looks like Ms. Standridge
5 is holding something that I guess corresponds to
6 that. I guess, the first question, is the Government
7 in agreement to let them have these pictures with
8 some tape so they can put them on the walls?

9 MS. ARMIJO: Yes, Your Honor.

10 THE COURT: How about the defendants?
11 Everybody in agreement?

12 MS. JACKS: Yes, I think we need to sit
13 down and go through which pictures go back.

14 MS. ARMIJO: I agree with that.

15 MS. DUNCAN: Yes, Your Honor.

16 THE COURT: So what I propose to put here
17 is just the answer "Yes." Is that okay as far as
18 response?

19 MS. ARMIJO: Yes, Your Honor, but I'm a
20 little concerned about what Ms. Jacks said as far as
21 we don't know which ones in particular they want. I
22 don't want to pick and choose, so I think that either
23 all the pictures should go back or none. I don't
24 think that we should be limited in what we do.

25 MS. JACKS: Let's ask them for a list of

1 who they want.

2 MS. BHALLA: Or maybe reread the question.
3 Because I think the question specifies who they want.

4 THE COURT: I think it does, too, unless
5 I'm missing something. They want the pictures of the
6 cooperators from 12/3/15 and 4/28/16. So I think if
7 you give them all the pictures of where they have a
8 card in front of with those two dates, I think we
9 give them what they want.

10 MS. BHALLA: I agree, Your Honor.

11 MR. LOWRY: With the exception, Your Honor,
12 remember, Eric Duran was never under arrest. And I
13 think there may have been one other individual who
14 was never under arrest.

15 MS. ARMIJO: And so pictures of him would
16 not go back, because he doesn't have placards with
17 them.

18 THE COURT: So everybody in agreement?
19 We're just going to pick the ones with those two
20 dates and give them a roll of tape. So I'll answer
21 this "Yes." Anybody have an objection to that?

22 MS. BHALLA: No, Your Honor. I think we
23 would like the chance to make sure that it's correct
24 before we send it back there, if there is no
25 objection from the Court to us doing that.

1 THE COURT: All right. I'll put "Yes" here
2 and we'll wait to deliver the note back until y'all
3 are in agreement on the pictures. And we're not
4 going to put any of the defendants' pictures back.
5 They didn't request them, so we're not going to send
6 them back. Everybody in agreement on that?

7 MS. BHALLA: Yes, Your Honor.

8 THE COURT: So I'm going to have
9 Ms. Standridge show you this note and see if you can
10 read it and it's acceptable. And if it is, we'll
11 send that back when we send the pictures.

12 If it's all right, I'll just have Ms.
13 Standridge tell them to use these pages that we've
14 given, and if you want me to send a note, I can.
15 Otherwise, I'll just tell her to use these notes. Is
16 that all right with everybody?

17 MS. DUNCAN: Fine, Your Honor.

18 MS. ARMIJO: Yes.

19 THE COURT: All right. So I'll just sit
20 here for a second so y'all can look at these
21 pictures.

22 All right. Why don't you do this?
23 Ms. Standridge is going to show you these exhibits,
24 and if y'all are in agreement, we'll put them on the
25 record so we know what documents are going back

1 there.

2 THE CLERK: Is it easier if I do it on the

3 Elmo?

4 MR. VILLA: Sure.

5 MS. BHALLA: Mr. Garcia is not a

6 cooperator.

7 THE COURT: Are you in agreement?

8 MS. ARMIJO: Yes.

9 MR. VILLA: What number?

10 THE CLERK: 561? Yes?

11 MS. BHALLA: Yes.

12 THE CLERK: 568?

13 MS. BHALLA: Yes.

14 THE CLERK: 573?

15 MR. CASTELLANO: Are those two of Roy

16 Martinez?

17 THE CLERK: Same person.

18 MS. FOX-YOUNG: If they asked for

19 photographs, we should give them all.

20 MS. BHALLA: Can you tell us what number?

21 THE CLERK: 573. So yes?

22 MS. BHALLA: Yes.

23 THE CLERK: This is 574.

24 MS. BHALLA: Yes.

25 THE CLERK: This is 581.

1 MS. BHALLA: Yes.
2 THE CLERK: This is 586.
3 MS. BHALLA: Yes.
4 THE CLERK: 596.
5 MS. BHALLA: Yes.
6 THE CLERK: 605.
7 MS. BHALLA: Yes.
8 THE CLERK: 606.
9 MS. BHALLA: Yes.
10 THE CLERK: 619.
11 MS. BHALLA: Yes.
12 THE CLERK: 628.
13 MS. BHALLA: Yes.
14 THE CLERK: 636.
15 MS. BHALLA: Yes.
16 THE CLERK: Am I missing any that anybody
17 knows of?
18 MR. VILLA: Mr. Urquizo.
19 MS. BHALLA: I didn't see Mr. Urquizo.
20 MS. ARMIJO: He was not on those dates.
21 THE CLERK: So the only one that is not
22 going back is Chris Garcia, 527.
23 MS. BHALLA: Correct.
24 THE COURT: All right. I'm going to read
25 the ones that are going back. It will be

1 Government's Exhibits 561, 568, 573, 574, 581, 586,
2 596, 605, 606, 619, 628, and 636.

3 All right. Give these to Ms. Standridge.
4 She can then take those back to the jury.

5 Do you need a tape dispenser? Do you want
6 to take mine?

7 All right. Is there anything else we need
8 to discuss while we're together? Anything else I can
9 do for you? Mr. Castellano?

10 MR. CASTELLANO: I'm looking at the -- I
11 think the Court referenced jury instructions 24 and
12 26 and asked the jury to reread those instructions.
13 Jury instruction 26 in terms of racketeering activity
14 has -- it may be confusing because it has the
15 elements of first-degree murder only. The Court
16 instructed in jury instructions 27 and 28 of two
17 different theories of murder, first-degree and
18 second-degree. So that's just a discrepancy in the
19 instructions in terms of what racketeering activity
20 could include. So we're missing a theory of murder
21 in instruction 26. I'm just trying to make sure we
22 don't have jury confusion.

23 THE COURT: All right. Do defendants want
24 the Court to do anything about that?

25 MR. VILLA: Did your response already go

1 back?

2 THE COURT: I think it's on its way.

3 MR. VILLA: I think we just have to wait,
4 then, and see if there is a follow-up question.

5 MS. JACKS: Did the pictures already go
6 back?

7 THE COURT: They have. Yes.

8 MR. VILLA: What was the Court's response
9 with the pictures?

10 THE COURT: Just yes.

11 MS. FOX-YOUNG: And Your Honor, is that
12 Clerk's Exhibit AB or BB, the last note?

13 THE COURT: That should be AB. I hope she
14 made a copy of it. But if not, we'll get it out of
15 the jury room when deliberations are done.

16 Did you make a copy of both those notes for
17 the jury?

18 THE CLERK: Not the second one, but the
19 first one.

20 THE COURT: Well, if you get a chance, make
21 a copy and mark it as Exhibit AB.

22 All right. Anything else, Mr. Castellano?

23 MR. CASTELLANO: No, Your Honor.

24 THE COURT: How about from the defendants?
25 Anything else we need to discuss? Anything else I

1 can do for you?

2 MS. DUNCAN: No, Your Honor.

3 MR. VILLA: No, Your Honor.

4 MS. JACKS: No.

5 THE COURT: All right. We'll be in recess
6 then. We'll call you if we get any further
7 information from the jury.

8 (The Court stood in recess.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com


1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages constitute
8 a true transcript of proceedings had before the said
9 Court, held in the District of New Mexico, in the
10 matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

13
14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/19
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com